Office-Supreme Court, U.S.
FILED
APR 8 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1556

In the Supreme Court of the United States

OCTOBER TERM, 1980

CONTROLLER OF THE STATE OF CALIFORNIA AND
COUNTY TREASURER OF THE COUNTY OF
LOS ANGELES, PETITIONERS

v.

ATTORNEY GENERAL OF THE STATE OF TEXAS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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GENERAL OF THE STATE OF TEXAS, ET AL.

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MEMORANDUM FOR THE UNITED STATES

Petitioners seek review of the decision below holding that the Federal Interpleader Act (28 U.S.C. 1335) conferred jurisdiction upon the district court to hear this suit, brought by the administrators of the estate of Howard Hughes in the United States District Court for the Western District of Texas to resolve conflicting claims of domicile-based inheritance taxes asserted by the states of Texas and California.[1]

1. The pertinent facts are as follows: The decedent, Howard Robard Hughes, Jr., died on April 5, 1976, leaving a substantial estate consisting primarily of the stock of Summa Corporation, a Delaware corporation wholly owned by him (Pet. App. 2a). Administrators were appointed in

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[1]On March 12, 1981, petitioners filed a motion for leave to file a complaint invoking the original jurisdiction of this Court (see No. 88, Original).

each of five states where the decedent owned property: Texas, California, Nevada, Delaware and Louisiana.[2] Texas and California claim the decedent as a domiciliary and each seeks to impose its state death taxes on the estate's tangible assets located within its borders and on all the estate's intangible assets. The administrators claim that at the time of his death decedent was domiciled in Nevada, a state which imposes no death taxes, and that if both Texas and California impose their state death taxes, the total state and federal taxes due will exceed the gross estate (Pet. App. 2a-3a).

In proceedings instituted in the state courts of Texas, a jury determined that decedent had been domiciled in Texas. Approximately three days before that trial began, the State of California moved for leave to file a complaint invoking this Court's original jurisdiction (Pet. App. 3a). The Court denied the motion. In concurring opinions, Justices Brennan, Stewart, Powell and Stevens suggested that the administrators might obtain a domicile determination binding on both states by instituting a federal interpleader action. *California* v. *Texas*, 437 U.S. 601, 601-616 (1978).

The Texas administrator thereafter instituted the present suit in the United States District Court for the Western District of Texas. The official Texas defendants moved to dismiss the suit for lack of jurisdiction; the official California defendants moved to add certain purported heirs and defendants and to change venue. In accordance with the stipulation of the parties, the district court first considered the motions filed by the California defendants. It denied the

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[2] A Texas court appointed William Rice Lummis and Annette Gano Lummis as temporaty co-administrators. Annette Gano Lummis died and her powers vested in William Rice Lummis. In Delaware and Louisiana, Lummis was appointed administrator. Richard Gano was appointed administrator in California. The First National Bank of Nevada was originally appointed administrator in Nevada, but Lummis was subsequently named co-administrator (Pet. App. 2a & n.2).

motion to add defendants, as well as the motion to change venue (Pet. App. 1e-6e, 1f-3f). Thereafter, the California defendants sought to dismiss the suit (Pet. App. 1d). While the motions to dismiss were pending, the administrators amended their complaint to add the United States and certain other administrators as defendants. The United States was granted an extension of time within which to file its answer until after the district court had disposed of the pending motions to dismiss. Subsequently, the district court dismissed the case on the ground that the diversity requirements of 28 U.S.C. 1335 were not satisfied (Pet. App. 1d-7d, 1g-2g, 1h). As a consequence, the United States had no occasion to file an answer or other responsive pleading.

On appeal, the Texas defendants urged that the district court had correctly dismissed the complaint. The official California defendants argued that the district court had erred in refusing to add defendants and to change venue. They alternatively argued that the district court properly dismissed the suit (Pet. App. 4a). In its brief to the court of appeals, the United States took no position with respect to whether the requisite diversity of citizenship of the parties existed. The government did maintain, however, that it should be dismissed as a party to the litigation because the estate's attempt to obtain an advance declaration of the decedent's domicile that would be binding on the United States for federal estate tax purposes was barred by the tax exception to the Declaratory Judgment Act (28 U.S.C. 2201). The court of appeals reversed the district court's judgment that the requisite diversity between the parties did not exist and remanded the case for trial on the merits. Because the district court had not had the opportunity to consider the government's contention that the Declaratory Judgment Act barred the relief sought against the United States, the court of appeals declined to rule on the issue

until the district court decided it on remand (Pet. App. 13a & n.14).

2. Petitioners contend (Pet. 7-11) that the district court lacks jurisdiction to entertain this suit because it involves a controversy between two states which can only be resolved by this Court under its original jurisdiction.[3] They alternatively contend (Pet. 15-18) that the district court has no jurisdiction to hear this suit because the diversity requirements of 28 U.S.C. 1335 have not been met.

The United States took no position in either court below on whether the administrators properly invoked the federal interpleader statute in seeking to resolve the conflicting domicile claims of Texas and California. Since petitioners' contentions do not bear on the government's sole argument in this case that it should be dismissed as a party, the United States takes no position with respect to whether the petition for a writ of certiorari should be granted.

WADE H. MCCREE, JR.
Solicitor General

APRIL 1981

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[3]Petitioners have again sought to invoke the original jurisdiction of this Court. See page 1, note 1, *supra*.

DOJ-1981-04